SPEECH

OF

HON. I. P. WALKER, OF WISCONSIN,

IN SENATE OF THE UNITED STATES, MARCH 6, 1850,

On the Compromise Resolutions submitted by Mr. CLAY, on the 25th of January.

The Senate having resumed the consideration of the Compromise Resolutions offered by Mr. CLAY, on the 25th of January—

Mr. WALKER rose and said:

Mr. PRESIDENT: I propose to address myself to-day mainly to the second resolution of the series offered by the Senator from Kentucky, [Mr. CLAY:] but before I do so, I wish to submit a few observations upon the question of the power of Congress to legislate for the territories; and particularly in its bearing upon the question of slavery. The Senator from Michigan [Mr. CASS] submitted to us, a few days since, an argument deserving great consideration, and one most interesting in the points on which it touched. And, sir, it is rare in the life of one who mingles in political matters, to witness an exhibition of greater sublimity than was presented to us, when he rose and delivered his views as he did—and as he must have felt, and has acknowledged—in opposition to the sentiments and views of nine tenths of the major half of this Union, and in opposition to what now seem to be the views and sentiments of the leading Senators, at least, in the other. It showed an independence of thought—an independence of feeling and spirit—which, I must say, is too rarely exhibited in our representative Republic. But, notwithstanding all this, I cannot agree with the sentiments he expressed in regard to the powers of Congress. In fact, I do not think that, after all the Senator said, (and so ably,) he touched the real foundation of the power of Congress to legislate over the territories. If the Senator will permit me to ask him a few questions, I think we can bring this subject more plainly before the Senate. I shall do so, for the purpose—if he be wrong and becomes satisfied of it—that he may be afforded an opportunity of correcting his error; for I believe the Senator is one "who does not stereotype, but corrects his errors." And I shall do so for the further object, that if I am wrong, I may have the benefit of his experience and his knowledge to set me right. I would ask the Senator, if he will permit me, if he admits, or not, that the power to acquire territory is an incident to the war and treaty-making power?

Mr. CASS. No, not at all. It is, as I declared in my speech, not an incident, but a *part* of the treaty-making power, to acquire territory.

Mr WALKER. The answer is stronger than I expected.

Mr. CASS. It is the doctrine I maintained in my speech, and what I maintain now.

Mr. WALKER. It was a difficulty on this subject, from the phraseology of the Senator's speech, that led me to make the inquiry which I have. A further inquiry I have to make is, where was the power to make war and treaties vested before it was delegated to this Government?

Mr. CASS. Under the old Confederation, does the Senator mean?

Mr. WALKER. No, sir—before the States gave up the power to the *United* States.

Mr. CASS. We were not an independent Government, or Republic, before that. Great Britain, of course, had the power then.

Mr. WALKER. That is true, before the States were independent; but the import of my question is not understood, nor the answer to it given; and I will, therefore, change it. Before the power to make war and treaties was delegated by the States, where did it reside?

Mr. CASS. I really do not understand the gentleman. There was certainly no such power until the Union, the Government itself, was formed.

Mr. WALKER. I meant the question in no unkindness.

Mr. CASS. Oh, certainly not. I have not so understood it.

Mr. WALKER. My object was, that the view which the Senator entertained might be brought before the Senate. I will cease to interrogate him, however, and will state my position.

Mr. CASS. I am certainly willing to be interrogated all day, and to answer all the questions which the Senator may put to me. I now repeat, that if I understood his question, I would give it a categorical answer. I can only repeat, what I said before, that until the States united together, there was no common power to declare war. To claim that there was, would be to claim that this is a Government of original powers, which would be a monstrous construction.

Mr. WALKER. So I understood when I asked the question, where did the power reside before it was delegated? The answer undoubtedly must be, that it resided with the States. If this is a Government of delegated powers, the powers that are delegated by the Constitution must have resided with those who had to make the delegation. I contend, then, that the power to make war and treaties rested with the States; and that while it rested there, as the Senator has acknowledged, this Government had nothing to do with it. My object is to come to the conclusion that this power is an expressly delegated power, or so necessarily relative and incidental to a delegated power, as to be necessary and proper to the exercise of it.

To be more explicit: I have asked the question, whether the Senator admits or denies that the power to acquire territory was an incident to the war and treaty-making power? and he gives me an answer stronger than I expected—that it is the

power itself. I then ask, where the power to make treaties and to acquire territories resided before it was delegated to the United States? and the answer must necessarily be, that it rested with those powers who made the delegation—the States. The next question would be, that as with the power to make war and treaties, goes the power to acquire territory, where did the power to govern the acquisition reside before the power to acquire was delegated? Must not the answer be, that the power to govern was in the power which made the acquisition—the States? I intended to ask this further question: when a power was delegated by the States to the General Government, were not the incidents to that power also delegated? If any one can give an answer in the negative, I would be glad to have him do it. I hear none.

Mr. CASS. The Constitution, which gives the power, carries the incident to that power with it: otherwise it is not there; and if it is not clearly there, it would be, in all respects, a most violent construction which would deduce it. But the power to acquire is the power itself.

Mr. WALKER. My position is not understood. What I asked was, did the delegation of a *power* carry with it its incidents? This is not denied. Then, if the power to make war and treaties resided in the States, and if a part of the war and treaty-making power is the power to acquire territory, which necessarily carries with it, as an incident, the power to govern the territory, and the delegation of a power is a delegation of the incident, what becomes of that power, with its parts and incidents, when it is not only delegated to the General Government, but its exercise, by the States, is prohibited by the Constitution? Must it not be necessarily vested in Congress? I believe this view of the subject has never been presented in the Senate before. If it has, I have never seen it, or heard of it. I have never before heard it claimed, that the power to govern the territories was an expressly delegated power.

Mr. CASS. Has this Government any powers which are not given it in the Constitution?

Mr. WALKER. I have not contended that it has.

Mr. CASS. Must we not go to the Constitution to look for its powers?

Mr. WALKER. There is where I am going, and have gone.

Mr. CASS. No; the Senator is going before the Constitution.

Mr. WALKER. I ask the Senator if the States could delegate what they did not possess?

Mr. CASS. What does the Senator mean?

Mr. WALKER. I mean that the States, before they delegated it, possessed the power to make war and treaties; and that they have not only delegated the war and treaty-making power, of which the power to acquire and govern territories was an incident and part, but that the Constitution prohibits its exercise by the States; and that, consequently, the power, with its parts and incidents, must be vested in the General Government.

Mr. CASS. If the Senator means that they have not delegated it positively, and that it is merely inferential, I maintain that the States never possessed such powers to be delegated or inferred.

Mr. WALKER. The Senator runs into the doctine against which he warns me, to wit: that this is a Government of inherent, and not of delegated, powers. I contend, that the power to acquire and govern is a delegated power. He will not admit that the power resided in the States, nor will he answer me whether the States delegated that which they did not possess. Why is there a prohibition against their exercising that power, if they never possessed it? My position, then, to repeat it, after this colloquy, is this: that the treaty and war-making power, with its parts and incidents to acquire and govern territory, resided with the States before the formation of the Confederation or Union, and that, when the Constitution was adopted, they gave up that power. Under the delegation of the treaty and war-making power, was necessarily delegated the power to acquire territory, and as necessarily the power to govern it. I wish to get this explanation and the views I entertain clearly before the Senate, that it may be understood that, while I contend for the exercise of this power on the part of Congress, I have some views, at least rational, on the subject of the power of Congress to do what I desire. If Congress did not possess the power—if it was not clearly perceived that the States had given up this power—it must necessarily be an exercise of power which is doubtful, and being doubtful, we perhaps ought to refrain from the exercise of it. I present this view for another purpose. It is generally charged that we are violating the Constitution in doing what we propose in regard to the territories. Certainly none of us intend any such thing, and I wish to be understood, so far as I am concerned. I look upon Congress as not exercising a merely inferential power, but an expressly delegated power, when it exercises legislation for the territories.

It may be contended, however, that the power to legislate on the *subject of slavery* was an exception to the general powers of a State to legislate for its territories. But can any one point out why, or wherein, this exception existed, or any evidence or authority that it existed at all? No, sir! It would be strange, indeed, if the individual States did not possess this power in their territories before they had delegated *any* of their powers; and yet, after they had delegated the most important of them, they should possess *this very power;* for certainly they now *possess* it, to the fullest extent, in territory under their jurisdictions. Some have abolished, some have prohibited it, and others have regulated it, in all its details.

But to come now to the subject for which I mainly took the floor. The Senator from Kentucky has submitted to us a series of resolutions, the second of which reads as follows:

2. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the Republic of Mexico, it is inexpedient for Congress to provide by law, either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

I have moved so to amend this resolution, that it shall read:

Resolved, That as slavery does not exist by law, but has been abolished and prohibited, together with the slave-trade, and cannot be introduced into any of the territory acquired by the United States from the Republic of Mexico, without positive enactment, it is unexpedient, &c.

Without wishing to be understood as pledged to vote for this resolution, I intend to try to make good the proposition involved in my amendment, to wit: that slavery does not only not exist by law, but that it has been abolished and prohibited,

and cannot be carried into California and New Mexico, without a positive enactment for that purpose. In doing this, I shall present the laws of Mexico. I shall go behind the period to which the distinguished Senator from Missouri [Mr. BENTON] called our attention a few days since, and I shall present some other provisions of law, and of stipulation, on the part of Mexico, than those presented by him. He commenced with the decree Guerrero, in 1829. I shall go back as far as the year 1823.

It will be borne in mind that Mexico declared her independence on the 24th of February, 1821. In not quite one year and eleven months after that day, the Government of Mexico took its first action on the subject of slavery. On the 4th January, 1823, what is called the colonization act of Mexico, was passed. It was passed by the political junta under Iturbide, the then Emperor. The thirtieth article of that law reads as follows:

"ART. 30. After the publication of this law, there can be no sale or purchase of slaves which may be introduced into the empire. The children of slaves born in the empire shall be free at fourteen years of age."

It is a little singular that this colonization act was passed, as history informs us, at the earnest solicitation of the agent of Texas, then in Mexico. It would have taken, under the operation of this law alone, but a short time to rid the country of slavery. The slaves then living would have been the last.

The next act, on the part of Mexico, was passed July 13, 1824. It has been once brought to the attention of the Senate by the Senator from Mississippi, [Mr. DAVIS,] and once by the Senator from Missouri, [Mr. BENTON;] but I will again read it, for the purpose of offering some comments on its provisions:

"DECREE OF THE 13TH OF JULY, 1824.

"*Prohibition by Congress of the Traffic in Slaves.*

"The sovereign constituent Congress of the United States of Mexico has thought it proper to decree as follows:

"1. The commerce of traffic in slaves is forever prohibited in the territory of the United States of Mexico, under whatever flag, and coming from whatever POWER, (or country.)

"2. Slaves which shall be introduced against the tenor of the foregoing article are free, from the single fact of treading the *territory* of Mexico.

"3. Any vessel, whether national or foreign, in which slaves shall be introduced, shall be irremissibly confiscated, with all its cargo; and the owners, supercargo, captain, master, and pilots, shall suffer the punishment of ten years' imprisonment."

Sir, there is nothing which, in its terms, can be more positively prohibitory of the slave-trade, than this act. There could scarcely be imagined penalties which would make it more binding. Why, the innocent pilot, who merely navigates the vessel into port, is made one of those who are subject to those penalties.

In consequence of this action upon the part of Mexico, Great Britain was induced to acknowledge her independence. I do not speak without having referred to the history of that period; and it will be seen, by consulting the diplomatic correspondence of the day between the agents of Mexico and those of Great Britain, that it was one of the principal causes which led to the acknowledgment of Mexican independence by the British Government. In 1826 a treaty was entered into between Mexico and Great Britain, the fifteenth article of which, according to the English text, is as follows:

"The Government of Mexico engages to cooperate with his Britannic Majesty for the total abolition of the slave-trade, and to prohibit all persons inhabiting within the territories of Mexico, in the most effectual manner, from taking any share in such trade."

This brings us up to the period of the celebrated decree of Guerrero, which is as follows:

[Translation.]

"ABOLITION OF SLAVERY.

"*The President of the United Mexican States to the inhabitants of the Republic:*

"Desiring to signalize, in the year 1829, the anniversary of independence, by an act of national justice and beneficence, which may tend to the benefit and support of so important a good, which may strengthen more and more the public tranquility, which may cooperate in the aggrandizement of the Republic, and which may restore to an unfortunate portion of its inhabitants the sacred rights which nature gave them, and the nation protected by wise and just laws, in conformity to the provision of the 30th article of the constitutive act, exercising the extraordinary powers which are conceded to me, I do decree:

"1. Slavery is abolished in the Republic.

"2. Those who, until to-day have been considered slaves, are consequently free.

"3. When the condition of the treasury will permit, the owners of the slaves will be indemnified in the manner which shall be provided for by law.

"JOSE MARIA DE BOCANEGRA.

"MEXICO, 15th September, 1829, A. D."

"And in order that the present decree may have its full and entire execution, I order it to be printed, published, and circulated to all those whose obligation is to have it fulfilled.

"Given in the Federal Palace of Mexico, on the 15th of September, 1829.

"VINCENTE GUERRERO,
"LORENZO DE ZAVALA."

But it is said that GUERRERO was an usurper, and that he had no power to issue such a decree, and make it effectual. For the information of those who may be thus doubtful, it may be proper to bring the attention of the Senate to the act which conferred upon GUERRERO the power under which he was then acting; and I will say, that if the Congress of Mexico had the power to confer absolute and arbitrary authority upon the President of that Republic, it was done, so far as the terms used are concerned. It is as follows:

[Translation.]

"EXTRAORDINARY POWERS TO THE GOVERNMENT.

"ART. 1. The EXECUTIVE of the confederation is authorized to adopt *whatever measures may be necessary* for the *preservation of independence, of the present system of government, and of tranquillity.*

"ART. 2. By the preceding article, the Government is *not* authorized to *dispose* of the *lives* of Mexicans, or to *expel them* from the territory of the Republic.

"ART. 3. This authority shall cease as soon as the General Congress shall meet in ordinary sessions."—*Collection of Laws and Decrees made by the General Congress, &c., of 1829 and 1830, page 55.*

We see here that absolute power, with the exception of taking the lives of and banishing Mexican citizens, was conferred upon the President; and it was given for the preservation of the existence of the Republic. It must be borne in mind, that at this time Mexico was invaded by the Spaniards; and the most terrible apprehensions were entertained that, in consequence of the combined efforts of Texas on the one hand, and of Spain on the other, the independence of the nation would be subverted. Hence it seems to have become necessary, from the peril of the Government, to repose the most unlimited power in some one of its departments, which could act immediately, in order to preserve the existence of the Republic. Well, this power, consequently, was given to her President, GUERRERO. There was no subject at the time, relating to the politics of Mexico, which excited so much sympathy in her behalf, as that of her efforts to abolish slavery; and consequently GUERRERO issued his decree, under these extraordinary powers, in order to secure the influence, if not the aid, of other Powers hostile to that institution.

Mr. BERRIEN. Will the Senator permit me to ask him a question?

Mr. WALKER. Certainly.

Mr. BERRIEN. Does the Senator believe that there is any clause in the Constitution of Mexico investing the Mexican Congress with the power to confer upon any citizen of Mexico unlimited power?

Mr. WALKER. I will endeavor to answer this question; and though I admit there is no clause in the Mexican constitution expressly giving the power, still I think I shall be able to satisfy the Senator that the power, in regard to which he inquires, does, under their form of government, reside in the Mexican Congress. The Senator no doubt puts the question, because he assimilates our Government to that of Mexico; and knowing that no such power exists under our Constitution, he takes it for granted none such exists there—both being confederated Republics. But there is a great error in assimilating the cases of Mexico and the United States, in this, that Mexico was originally a *consolidated empire;* the United States were *separate* and *independent States*. In Mexico, the *nation* declared her independence; here it was declared that the "*States* were, and of right ought to be, free and independent." In Mexico, the States were created by the delegation of powers to them, by the *General Government;* here the General Government was created by the delegation *to it* of powers by the *States*. There the powers, not delegated *by* the *General Government, or prohibited to it, are reserved to its:* here the powers not delegated by the *States*, or prohibited to them, are reserved to *them*. Now for the authority.

Mexican independence was declared, and her Government established under what is called the plan of IGUALA, framed by ITURBIDE, who became the first Emperor. I will read the first, fourth, fifth, sixth, and seventh articles of this plan or Constitution, for the purpose of elucidating the distinction I have drawn between that Government and this:

"ART. 1. The *Mexican nation* is independent of the Spanish nation, and of every other, even on its own continent."

"ART. 4. The Government shall be a constitutional *monarchy*.

"ART. 5. A *junta* shall be named, consisting of individuals who enjoy the highest reputation in the different parties which have shown themselves.

"ART. 6. This junta shall be under the Presidency of his Excellency, the CONDE DEL VENADITO, the present Viceroy of Mexico.

"ART. 7. It shall govern, *in the sense of the nation*, according to the laws now in force; and its principal business will be to *convoke*, according to such rules as it shall deem expedient, a *Congress for the formation of a Constitution* more suitable to the country."

It will be perceived, that in Mexico a *Congress* was convoked by *Government to form a constitution;* here the *States* assembled to create a Congress, a *Constitution, and a Government*. Where is the sovereignty of the States in Mexico to be found? If afterward a Constitution was formed, and States established, the *States* derived their powers from the *Government;* here the *Government* derived its powers from the *States*. ITURBIDE established the junta, mentioned in the fifth article of the plan, by proclamation. This junta established a *regency*, and next a *plan for assembling a Congress*. A Congress met in February, 1822, when the junta dissolved itself. On the 18th of May, 1822, ITURBIDE was proclaimed Emperor of Mexico, under the title of AUGUSTINE I.; and on the 30th of October following, *he dissolved the Congress*, and appointed a junta of forty-five. This was dissolved by VICTORIA, after ITURBIDE had abdicated; and a *supreme Executive* of three was appointed. A *Constituent Congress was next established, after the plan of a Constitution had been promulged*. The Congress discussed and *approved* this plan, which is the Constitution of 1824. The very first thing which the Congress did under it, was to assume the *supreme legislative power*. How unlike is all this to the mode of establishing our Government! My answer to the Senator from Georgia, then, is, that I do find in the Mexican Government the power (and they have often exercised it) to confer on GUERRERO the extraordinary powers in question. *It is among its reserved and unprohibited powers.*

Soon after the issue of this decree, GUERRERO was driven from power. I believe he was shot on the 11th of February, 1831. We know that it has been a part of the history of Mexico, that whenever one of their military chieftains has begun to experience the checks of misfortune, his sunshine friends at once leave him. So soon after his death as the 15th of March, his decrees had so far fallen into disrepute, that the Congress of Mexico then passed an act, or rather a joint resolution, to which our attention has already been called, by which his decrees were suspended. One article of that joint resolution is as follows:

"All laws, decrees, regulations, orders, and provisions which were promulgated by the Government, in virtue of the above-said extraordinary powers, that in their nature appertain to the legislative power, shall be submitted to the General Congress, and do not forward shall be without effect until they are revised by the Chambers."

We see, then, that the decree was suspended; but in this connection let me read what had been the effects upon the institution of slavery under that decree.

I hold in my hand a letter from a gentleman residing at the time, and for years, in Mexico. I speak of Dr. John Baldwin, now in this city, and who is one of the principal claimants under the Mexican treaty, and a distinguished and worthy gentleman. He has done me the kindness, at my request, to write me this letter on the subject; and as it shows the effect and operation of the decree of GUERRERO, I will read a portion of it:

"WASHINGTON CITY, *Feb.* 22, 1850.

"SIR: In compliance with your request, I hasten to reduce the subject of our conversation, on the abolition of slavery in Mexico, to writing. I was, at the time of the ratification of the treaty of Guadalupe Hidalgo, the only person in this city who had any distinct or positive information on that subject. I gave to Senator CLARKE, of Rhode Island, translations of the Mexican laws upon the subject, viz: the decree of GUERRERO, the President of Mexico, dated 15th September, 1829, together with the subsequent decree of the Mexican Congress of 1837.

"The practical effect of the decree of GUERRERO, in the State of Vera Cruz, where I resided at the time, was the immediate emancipation of the few slaves who resided at that time in the State. The owners, together with their slaves, were, by order of the *gefe politico*, summoned to appear before the proper authority, upon which appraisers were duly appointed to affix a just value upon the slaves; with respect a certificate was extended by the sub-commissary of the department, in which was set forth the amount which the owner was entitled to receive from the public treasury, in compensation for the slave or slaves liberated under the aforesaid decree. To the slave, thus manumitted, a document was given, setting forth the manner in which his or her liberty was obtained.

"The persons thus emancipated, by virtue of the decree of September 15th, were never again reduced to slavery."

I read this, because it was said by the Senator from Mississippi, [Mr. DAVIS,] that the decree of GUERRERO was never fully executed.

Mr. DAVIS. Does the Senator allude to me?

Mr. WALKER. I do.

Mr. DAVIS. Then the Senator misunderstands

what I said. I said, that undoubtedly some slaves were liberated under the decree of GUERRERO, but that it never was fully carried into effect, as an evidence of which is the fact, that the Mexican Congress passed a law in 1837 to carry it into effect.

Mr. WALKER. I may not have comprehended the remark of the Senator from Mississippi, and it now occurs to me that he did make some such remark. But we hear what was the effect of that decree, from a gentleman who was there, and who witnessed its operation. The decree, after the act which suspended it, was of course without effect, until further action on the part of Congress. That action took place in 1837, and the act then passed I will read. I ask the Senate's attention particularly to its phraseology. The history of the act might well accompany it, that it may be clearly understood.

In 1830, there was an act passed, which seems to have been to conciliate Texas, which declared that no change should be made within the colony of Texas in reference to slaves therein, but that the General Government and the State authorities must take care that the *colonization* law be fully executed in *future*. When we come down to the period of 1837, we know that Texas had persisted in her revolutionary course, one of her complaints being, the action of Mexico in regard to slavery. We know that she was then struggling for her independence, and that the exception, made in the act of 1837, was governed by the hostile position which Texas and the mother country by this time occupied toward each other. The act was passed the 5th of April, 1837, and is as follows:

"1. Slavery is abolished, without any exception, in the whole Republic.

"2. The masters of slaves manumitted by the present law, or by the decree of the 15th of September, 1829, (*Recopilacion* of that month, p. 213,) shall be indemnified for their value, (*del interes de estos,*) according to the estimate which shall be made of their personal qualities; to which effect there shall be named a competent person (*un perito*) by the commissary-general, or whoever occupies his place, and another by the master; and in case of disagreement, a third, who shall be named by the respective constitutional alcalde, without any recourse from this determination. The indemnification of which this article speaks, shall not have operation with respect *to those colonists of Texas who may have taken part in the revolution of that department.*"

"3. The same owners to whom will be given gratis, the original documents of the valuation referred to in the anterior article, will present them to the Supreme Government, who will order him that the general Treasury issue the corresponding bonds for value of the respective amounts.

"The payment of said bonds will take place in the manner which the Government may judge most equitable, conciliating the rights of individuals with the *actual state of the public funds.*"

The Senator from Mississippi remarks, in regard to this act; that it "was never carried out." "So far as I have been able to learn, the appraisement, which was a part of the law *with which it was to go into effect*, was never made, nor in any manner compensation rendered." I quote now the exact language of the Senator from Mississippi, and I would ask him how he knows this? It would seem to me that it is likely he is mistaken in this respect, as he certainly was to some extent in the other.

Mr. DAVIS. I do not mistake in either. I say that so far as I have been able to learn from those who were then there, and who have been there since, and who were connected with the Government, this appraisement was never made.

Mr. WALKER. Nor does the law depend upon it. The effect of a law, at once abolishing slavery, does not depend upon the consingency of the appraisement, or payment of a compensation at an indefinite time. As well might it be said that he who takes a promissory note for the sale of a horse, would have a right to retake the horse if payment was not made. The act abolishes slavery unqualifiedly, and that *abolition* is not made to depend on the payment or appraisement. The owners were to be paid, *when it was in the power of the Government to pay them*, but slavery was not the less unqualifiedly destroyed and abolished, if they were never paid.

Mr. BERRIEN. With the consent of the Senator, I will ask him how could a provision have been carried out for the appraisement of the personal qualities of the slaves, if they were liberated by the mere operation of this act?

Mr. WALKER. In the same manner as the personal qualities of a slave who had been shot, could be ascertained in a court of justice, investigating a case under the law of bailment or trespass. The slave might be in eternity, and yet there might be witnesses who knew his qualities, and could testify in regard to them. I presume there is scarcely a slave whose personal qualities are not known to somebody.

The Senator from Georgia [Mr. BERRIEN] has heretofore asked, if slavery was abolished by the decree of Guerrero, what slavery there was left to be abolished by the Mexican Congress? I answer, that my opinion is, the decree swept slavery from the soil, except in Texas; and that there was *none* existing. But that there might be no doubt as to the validity of the decree, and to remove its suspension, was a very good reason why the law was passed. There was a good reason for it, if Mexico intended that her soil should not be *trodden by the slave.*

We have, then, sir, got down to the act of Congress of 1837; and attention being bestowed upon these laws, it will be seen that they are as effectually prohibitory of slavery, as if the term prohibited had been used. The term is used in regard to the slave-trade, and the purport and effect of the act of Congress of 1837 is prohibition. It declares that slavery is abolished without any exception in the whole Republic. Now, sir, a thing which is abolished—a right which is destroyed—no longer exists. Can any right which is abolished be ever exercised against the act of abolition? Is it not a prohibition? But I will not stop here. I will come down one step further; and that brings us to 1843—to the Constitution to which attention was directed the other day by the Senator from Missouri [Mr. BENTON.] It declares as follows:

"That no one is a slave in the territory of the nation, and any introduced shall be considered free, and shall be under the protection of the laws."

Is any stronger prohibition than this desired? Can slavery exist there? Is it not effectually destroyed? Is it not effectually prohibited, if no one is a slave throughout the Mexican territory, and every one which shall be introduced is to be free, and be under the protection of the laws?

Mr. BUTLER. Suppose that this territory was conquered entirely by a nation of slaveholders, could they not, whatever might be the laws of the territory, carry their *property* there?

Mr. WALKER. I will endeavor to answer the gentleman, and inform him that the judiciary has decided that question against him, if he means *slaves* by the term "property." It has decided, sir, that those laws remain in force on this very point. I will refer him to no free-State authority, but to that of the Supreme Court of the United

States, and to decisions repeated over and over again in the slave States themselves, and particularly to Walker's Mississippi Reports, page 37, which I shall presently quote.

But I was remarking upon the prohibitory character of the Constitution of Mexico of 1843. If anything can be prohibitory of slavery, it is that which declares, that the moment the foot of the slave touches the soil, he is free. Is there any language upon which we can rest more securely than that of the common law, that the slave is free the moment his foot touches the soil of England? And will it be contended that a slave taken there continues a slave? I presume not. It will not do to consult the common-law writers of England on this subject. The contradiction is given too positively, and the proof too strongly, to be controverted.

In 1844 the Mexican Constitution was again amended; and, according to Waddy Thompson, a southern gentleman, and a late minister to Mexico, in a work written by him, entitled "Recollections of Mexico," this constitution declares, that "SLAVERY IS FOREVER PROHIBITED,"—(page 180.)

If four words can be found which could more effectually put out of existence slavery, or the right to hold slaves, I should like to have them pointed out to me. In regard to time, I can find no term which expresses more than "*forever*," or one stronger for the destruction of a right, than "*prohibited*."

Here is a chain of legislation and governmental action on the subject of slavery, from a period of one year and eleven months after the Declaration of Mexican Independence, down to the year '844; and you will find all her acts, wherever touching the subject of slavery, assuming language not to be mistaken. Point me to one of the free States which has abolished slavery, and show me the law which in the same strength of terms destroys slavery. It is not in Connecticut that a law exists so strong—and she is as much adverse to slavery as any other State. I believe there is no free State, except in those formed out of the Northwest territory, where the prohibition is so strong against slavery as in Mexico. Indeed, the language of the ordinance of 1787 itself is not so strong. What does that declare? That "there shall be neither 'slavery nor involuntary servitude, *except* for the 'punishment of crime;" but it declares that fugitive slaves *shall be surrendered*. There is no proviso of the kind in the Mexican law. The language is, that slavery is abolished, without exception, in the whole Republic. The constitution of 1843 is, that no slave exists in the Republic, and that slaves brought there shall be free from the simple fact of treading on Mexican soil. The Constitution of 1844 is, that "*slavery is forever prohibited*." Compare that language with the ordinance of 1787, and you will find that the strength of terms is with the laws of Mexico.

Having given those laws, I now come to the question, and the great question which is here controverted, to wit: the effect of those laws upon this country, or rather upon persons going from this country into the territories acquired from Mexico.

I will here lay down a proposition of law: I hold it to be the law, both in this country and in England, that where a country acquired by conquest or cession has laws of its own, such laws continue and remain in full force until altered or repealed by the supreme power of the country making the acquisition, *except such laws only as are against the law of God, or incompatible with the Constitution or political law of the acquiring country*. Now, if this principle of law is controverted, I shall feel obliged, indeed, for the authorities against it. I have looked in vain for any, and I do not believe that any exist. If my position be correct, it settles the question, unless it can be shown that the slavery laws of the *States* are a part of the *political* law of this *Government*.

Mr. BERRIEN. Lest the Senator, by stating this proposition, should infer that the silence of the Senate was an acquiescence in it, I will make a remark. The proposition is, the laws of a country which is conquered or acquired, remain in force until they are repealed by the country making the acquisition.

Mr. WALKER. Except such only as are against the laws of God, or are incompatible with the Constitution or political laws of the country making the acquisition.

Mr. BERRIEN. The principle, as laid down by the writers of all nations, is, that the civil laws—those which control the conduct of citizens or subjects, in their intercourse with each other—remain in force until repealed; but the same authorities also assert that public or political laws cease to exist, *eo instanti*, upon the conquest or acquisition of the country. The question, then, for the Senator to discuss, is, what are *political* and what are civil laws?

Mr. WALKER. That is just what I am going to discuss; and I take the ground that the laws of Mexico to which I have alluded are *not of a political kind, or incompatible with our political law*.

I suppose gentlemen will concede that all the political laws we have are to be found in the Constitution, and those acts of Congress which were intended to carry out its provisions. Whether the authority of the Supreme Court will be considered good on this subject of slavery, or not, I will not undertake to say; but certain it is, that whatever the writers upon the law of nations may have affirmed in reference to this question, the Supreme Court has decided it against those gentlemen who claim the right to take their slaves to California. The first case to which I shall refer, is that of the UNITED STATES *versus* PERCHEMAN, in the seventh volume of Peters's Reports.

It is claimed by gentlemen here, that by virtue of the acquisition of the territory, the laws abolishing or prohibiting slavery were abrogated. The Supreme Court says, (pp. 86, 87,) in the case before me:

"It may not be unworthy of remark, that it is very unusual, *even in cases of conquest*, for the conqueror to do more than to displace the sovereign, and assume dominion over the country. The modern usage of nations, which has become *law*, would be *richly* [that cause of joyful end of *right*, which is acknowledged and felt by the whole civilized world, would be *outraged*, if private property should generally confiscated, and private rights annulled. *The people change their allegiance—their relation to their ancient sovereign is dissolved*; but their *relations to each other*, and their rights of property, remain undisturbed. If this be the modern rule, even in cases of *conquest*, who can *doubt* its application in the case of an *amicable cession of territory*."

In this case, sir, though the court decided the general principle, the case itself was one which related to property. PERCHEMAN claimed title to land, under a grant from the Governor of Florida, under authority from the King of Spain. It was contended, sir, precisely as it is contended here, that when Florida was acquired by this country, the laws and grants then existing in Florida were abrogated. The Supreme Court says, no; the

people only change their allegiance—the relation between them and the sovereign is dissolved, while the rights of property, and their relations to each other, remain as before.

But I will now refer to a decision that does not concern the rights of property, but which relates to the provisions of the law of salvage. Now, if the laws of Florida were abrogated by the cession, would not the salvage laws be abrogated as well as other laws? Can gentlemen draw the distinction? Not at all, sir. If gentlemen say that, because the laws relating to the institution of slavery are *recognized* by the Constitution, they become a part of the political law of the land, which abrogates the local law of the territory when annexed, why is not a commercial law a part of the same political law? for certainly the institution of commerce is not only *recognized*, but its whole regulation is embraced *exclusively*, by the Constitution. If they claim that the anti-slavery laws of Mexico become abrogated, on the acquisition in California and New Mexico, why not claim that the commercial law of salvage becomes abrogated also? Now, here is a decision which declares that the law relating to salvage remained in force after Florida was annexed to this country. The court says:

"The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never be held that the relations of the inhabitants with each other undergo any change. *Their relations with their former sovereign are dissolved*, and new relations are created between *them* and the *Government* which has acquired their territory. The same act which transfers their country, transfers *the allegiance of those* who remain in it; and the law, which may be denominated *political*, is necessarily changed, although that which regulates the *intercourse and general conduct of individuals, remains in force until altered by the newly-created power of the State*."—1st Peters's Sup. Ct. Reps., page 542.

Again:

"It has already been stated that all the laws which were in force in Florida, *while a province of Spain*—those excepted which were *political* in their character, *which concerned the relations between the people and their sovereign*—remained in *force until altered* by the Government of the *United States*. No laws *could* then have been in force, but those enacted by the *Spanish Government*."—*Same case, page 544.*

This, sir, goes to the full extent of the doctrine for which I contend. It declares what the political law of this country is—what the political law of *every* country is: that it regulates the relations between the subject and the sovereign—between the Government and the citizens; and that all other laws remain in force in the conquered or ceded country, until repealed, altered, or amended by the country making the acquisition.

Mr. BERRIEN. Will the honorable Senator allow me to remind him, that the law to which he refers was continued in force by the act of Congress creating a territorial government for Florida? I refer to the act of 1822.

Mr. WALKER. I do not controvert what the Senator from Georgia says, if he means only that the act of 1822 *declared* the laws of Spain *to be* in *force*. But if he means to say that the act *enacted them into force*, I do controvert it.

Mr. BERRIEN. The court says, that the laws in force there were the laws of Spain.

Mr. WALKER. Just so.

Mr. BERRIEN. I affirm that the laws of Spain were in force there by the act of Congress, which organized a territorial government—the act of 1822.

Mr. WALKER. There, sir, we are at issue.

Mr. BERRIEN. Will the honorable Senator allow me to read from the act of 1822?

Mr. WALKER. Certainly.

Mr. BERRIEN. The provision is this:

"That the laws *in force* in said territory at the time of the passage of this act, and which are not inconsistent with the provisions thereof, shall *continue* in force until altered, amended, or repealed, by legislation of Congress."

Mr. WALKER. Suppose that be so, sir; then ——

Mr. BERRIEN. Then the continuance of the Spanish laws which *were in force* in Florida at the date of that act, is provided for by the act. Now, I want to say one word more—and that is, if the Spanish laws would have continued in force without such provision by act of Congress recognizing them, why were they specially *re-enacted* by this act? If this act was not necessary to give validity to the Spanish laws—if they continued in force, and would have continued in force without that act—why were those laws deliberately *re-enacted?*

Mr. WALKER. They were not re-enacted. The act was merely a *declaratory* act, in reference to laws that *were in force*, and would have remained in force without it. The act *acknowledges* them to be in force, and not to have been abrogated by the cession of Florida.

Mr. BERRIEN. If they would have continued in force without it, where was the necessity for its passage?

Mr. WALKER. Well, did the act put in force any that were *political* laws? for the Senator only contends that such were abrogated. No, sir; it declares that the laws *then in force* should continue in force. It does not put any in force; it merely admits that they *are in force;* and that is the very position that I take. And not only the judicial decisions have said so, but the Senator himself has said so, if he adopts the language of that act

Mr. BERRIEN. My proposition, if the Senator will allow me, is, if these laws would have been in force without the provisions of that act, where was the necessity for passing it?

Mr. WALKER. I have answered that already, about a dozen times. It declares the truth of my position, and admits that the laws of Spain *were* in force, and declares simply that, being *in force*, they should continue so. If they were in force, as the act admits, pray *when* would they have ceased to be in force without the act? Annexation had already taken place. It is evidence in favor of my position, and not of the Senator's. I tell him, again, the act was declaratory and supererogatory.

But, sir, I will now quote a case decided in a slave State—in the State of Mississippi—where the principle of law I have laid down was decided in a case where slavery was the question directly involved. The case goes even further than the Supreme Court has gone. I will ask the attention of the Senator from Mississippi [Mr. DAVIS] to it. The court says:

"The facts in this case are not controverted; that the three negroes *were slaves in Virginia*; that in 1784 they were taken by John Decker to the neighborhood of Vincennes; that he remained there from that time until the month of July, 1805; that the ordinance of Congress was passed in the month of July, in the year 1787; and that the constitution of the State of Indiana was adopted on the 29th June, 1816."

"These are the material facts; but the law arising out of the ordinance *by-virtue of cession of Virginia* to the United States of that district of country, and the *Constitution*, is *controverted*. To clear away the difficulties arising from extraneous matters, and to place the grounds of this opinion

plainly before the court, a short history of the country will be necessary. The country was within the *chartered limits of Virginia*; but from the year —— until the peace of 1763, it was subject to, and claimed by, *France*. By the peace of 1763, it was ceded to *Great Britain*. It will appear, by reference to the proclamation of General Gage, in 1775, and to the acts of Col. Wilkins, in granting lands as Governor of Illinois, that it was under a government distinct and separate from the then colony of Virginia. During our revolutionary war, it was *conquered by the arms of Virginia*; but there has been exhibited no evidence to show that *the laws of Virginia were ever extended to that country after its conquest*, or that Great Britain, after the treaty of 1763, by which she obtained it, ever changed the laws then existing in the province. I have carefully examined the acts of Virginia, and can find no *provision extending its laws to that district of country*."

Now, bear in mind, this is the conquered territory of Virginia. Had Virginia the right to take slaves into that territory? What says the court?

"I think, then, that it is *undeniable* that the laws, as they existed while it was a province of *France*, were the municipal laws of the country."

Here the court ran through three stages to get at the law. Well, sir, here is a further dictum in this case:

"From the facts, authorities, and reasons advanced, these consequences result: that, as conquered countries, they were subject to such laws as the conquerors chose to impose; *that the Legislature of Virginia, not making any change in their laws*, the ancient laws remained in full force; and that the 'titles, possessions, rights, and liberties' guaranteed, were those they enjoyed prior to the conquest, the '*lex loci*,' *not as citizens of Virginia*, but as a provincial appendage."

Sir, this decision grants that for which I am contending. The South asserts that, under the Constitution, she has a right to take slaves into these new territories, notwithstanding the laws there prohibit slavery. Yet, sir, her own courts decide that she may not take them. What becomes of the claim? It is worth nothing—it falls to the ground by virtue of her own judicial authorities; for this same case decides also that *the Constitution has nothing to do with the matter*. The court says: "Why, we are told it is inconsistent 'with the Constitution of the United States." "*The 'Constitution of the United States has nothing to do 'with the question.*"

Mr. DAVIS, of Mississippi. I would remind the Senator from Wisconsin, that we never fell into greater error than when we attempt to run a parallel with diverging lines; and I consider that the Senator has fallen into a similar mistake, in citing the case to which he has alluded, as bearing upon the subject in hand. He is surely a lawyer, and one of sufficient acuteness, it would appear to me, to distinguish between the case decided in Mississippi, concerning the laws in Virginia, which he has quoted, and that of taking slaves into California. The case in Virginia was one where she had sovereignty before the foundations of the Constitution were laid.

Mr. WALKER. The Senator from Mississippi always speaks so very positively——

Mr. DAVIS Because I am very certain.

Mr. WALKER. The Senator, as I was saying, always speaks so positively, and with an air —I say it with no disrespect—which seems to say, "Nothing more can be said"—"I know it all"—"it must be as I think." It is true, sir, that in the case which I have read, the slaves were taken to Indiana before the Constitution was adopted; but so much the worse for the Senator's logic. Virginia was then a slave country—the territory was hers—the slaves had been taken from Virginia, and not even the ordinance of 1787 was yet in the way; yet the court of the Senator's State passed through the sovereignty of *Virginia and England* to that of France, and decided the case under the laws of the latter; and herein lies the answer to the Senator from South Carolina, [Mr. BUTLER,] when he puts the case of a territory conquered by a nation of shareholders.

But I will now take another case—one where the slave was taken to Indiana, in 1807, after the adoption of the Constitution. I will read it, as appropriately bearing upon the question before us; and I think it knocks the very brains out of the argument of the Senator from Mississippi, [Mr. DAVIS.] I read from the case of Rankin rs. Lydia, 2 Marshall's Kentucky Reps., p. 470:

"Lydia was born a slave in Kentucky, in the year 1805, and belonged to John Warrick, a citizen of this State, who removed hence, in the year 1807, to the late territory of Indiana, where he settled, shortly after the 17th of September of that year, together with Lydia and her mother, whom he took with him, and whom he kept till the 6th of December, 1814, when he sold his right to Lydia, in that territory, to Thomas Miller, likewise a resident there, who sold her to Robert Todd, a citizen and resident of Kentucky, *who brought her to Kentucky*, and sold her to John W. Rankin, the defendant below, now plaintiff in error, who still holds and claims her as a slave for life, she being a person of color, and he having had knowledge, when he purchased her from Todd, of the foregoing facts."

On this state of the case, the court says, (the issue being on the freedom of Lydia:)

"In deciding this question, we disclaim the influence of the general principles of liberty which we all admire, and come ive it ought to be decided *by the law as it is*, and not as it ought to be. Slavery is sanctioned by the law of this State, and the right to hold them under our *municipal* regulations is unquestionable. But we view this as a right existing by positive law of a *municipal* [*mark you, not political*] character, without foundation in the law of nature, or the unwritten and common law. If, by the positive provisions in our code, we can and must hold our slav s in the one case, *and statutory provisions equally positive decide against that right in the other, and liberate the slave, he must, by an authority equally imperious*, BE DECLARED FREE."

In this case, sir, it will be found that the slaves were taken to the Indiana territory *under local laws permitting it;* and yet the court decided that the slaves became free. It is true, the court decided they became free by virtue of the ordinance of 1787; but that was nothing more than a local law for the territory, *forbidding slavery*. Now if, as is contended here, the Constitution makes slavery a *political* institution, it would have overridden the local law of the territory, as it is now contended it does the local law of California and New Mexico. But the court decided otherwise; and so it would in the present case; for I have certainly shown that in California and New Mexico there is quite as strong a local law against slavery.

It is claimed, Mr. President, that the slave laws of the United States *are* of a political character. All the slave laws of the UNITED States, of this kind, are to be found in the Constitution. Now, in what respects are *they* found? Certainly in but three. One is, that provision in the Constitution which regulates the computation or enumeration of the people as a basis of representation. Now, sir, when is that provision of the Constitution fulfilled? Why, when we *include three fifths of the slave population*, *in fixing a basis for representation*. But, again, in regard to direct taxation, how is that fulfilled? Why, of course, by enumerating three fifths of the slave population, in forming a basis of apportionment of taxes, when we shall resort to direct taxation. Here the operation of the Constitution ends, as well as our duty under it in this respect. The other provision is in regard to fugitive slaves. This is fulfilled whenever the States (or Congress) make provision for the extradition of fugitives. Here, too, the operation of the Con-

stitution ends in this particular, as well as our duty under it. What, sir, is there in either of these provisions, or all together, which gives this institution of slavery any of the features of a political law of this country? Nothing. Under our allegiance, we are bound only to the enumerations I have mentioned, and to the enactment of extradition laws Here our oaths and our allegiance to slavery end. This our allegiance to the Constitution binds us to do; but, sir, does it consequently follow that, because we fulfill these obligations of the Constitution throughout our Union, in conformity with our oaths, our allegiance also binds us to suffer slavery to override, not only the laws of Mexico existing in these territories, and plant itself where it does not exist, but also the power of this Government to prevent it? Unless this be so, slavery is no more a *political* institution than a navy yard. We have duties to perform to both; but we are no more bound to the one than the other to spread it, or to suffer it to spread itself everywhere in newly-acquired territory. We fulfill our duty to this Union and to slavery in the particulars I have mentioned. We have nothing further incumbent upon us to perform in relation to the subject. If the Constitution requires of us the performance of any other duty to slavery, it is to discountenance it, which view is developed in a decision made in Louisiana. I will read an extract from the decision which declares it—(Martin's Louisiana Reports, volume 2, pages 403 and 404.) In speaking of the Constitution, the Judge says:

"This instrument declares that 'no person held to service 'or labor in one State, under the laws thereof, escaping into 'another, shall, in consequence of any law or regulation 'therein, be discharged from such service or labor.' Hence the implication is strong, that such persons who do not escape, but whose owners voluntarily bring them, may be discharged by the laws or regulations of the State in which they are so brought; *for if this could not be so, of what use would be the prohibition?*"

I think the application is plain, sir, that only when a slave has escaped has his master the right to recapture him; that when voluntarily taken from under *laws* which tolerate slavery, to jurisdictions which do not, the slave is free; and that we are not bound to legislate in favor of slavery anywhere, *except when it escapes*, but ought to discourage it in every place to which it is proposed to take it voluntarily.

I come now to another branch of this argument. It is claimed by the South, that her citizens have the right to take their slaves to the territories *as property, on an equality with other property.* The highest claim for this right is that which asserts that slavery is based upon the law of nature and of God; thus placing the right to slave property on the foundation of all other property. It is thus put by the Senator from Mississippi, [Mr. DAVIS:]

"It is enough for me, that here we are not called upon to legislate either for its amelioration, or to fix the places in which it shall be held, and certainly have no power to abolish it. It is enough for me elsewhere to know, *that it was established by decree of Almighty God, that it is sanctioned in the Bible, in both Testaments, from Genesis to Revelation,* that it has existed in all ages, has been found among the people of the highest civilization, and in nations of the highest proficiency in the arts."

I answer, that slavery is a purely *local* institution; that it has no foundation in nature, or support in the laws of God; that it exists, and can only exist, by virtue of the local laws of the States.

I will read, as authority on this point, from the same Mississippi case already quoted, (page 42.) The court says:

"Slavery is condemned by reason and the laws of nature. *It exists, and can only exist, through municipal regulations.*"

Here is another case in the same State, where the same point is decided. It is the case of the State of Mississippi *vs.* Isaac Jones, (Walker's Reps., 86.) The court decides that

"The right of the master exists, *not* by force of the law of nature or of nations, but by virtue *only* of the *positive law of the State.*"

Here are two direct contradictions, from his own State, of the Senator's assertion, that the institution is founded on the law of nature and of God.

Mr. DAVIS. I take my argument from the Bible.

Mr. WALKER. I was not quoting from the Bible, although I think that holy book would be found but a poor support of slavery, if the following be its true condition—the description of which I find in another case in the State of North Carolina, (2 Dev., 266:)

"The *end* is the profit of the master, his security, and the public safety; the *subject* one *doomed*, in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own, and to toil that another may reap the fruit. * * * Such obedience is the consequence only of uncontrolled authority over the body."

The Bible tells me that God gave to man dominion and "uncontrolled authority over the bodies of beasts," but not over the bodies and *minds* of his fellow man.

But to get back to the law, and the legal view of the foundation of slavery. The next authority which I read is from 2d Martin's La. Reps., 402 and 403:

"The relation of owner and slave, is, in the States of this Union, in which it has a legal existence, *a creature of the municipal law.*"

My next authority, is the case in 2d Marshall, quoted before for another purpose:

"Slavery is sanctioned by the laws of this State, [Kentucky;] and the right to hold them under our *municipal* regulations is unquestionable. But we view this as a right existing by positive law of a *municipal character, without foundation in the law of nature, or the unwritten and common law.*"

If these decisions do not sufficiently controvert the Senator's position, of the natural or divine property foundation of slavery, let us try again. I quote again from the North Carolina case. The language is strong, but I read it in no offensive sense to the Senator from Mississippi. After speaking of the condition of the slave, as before read, the court says, (2d Dev., 266:)

"What moral considerations shall be addressed to such a being, to convince him of what it is impossible but that the *most stupid most feel and know can never be true*, that he is thus to labor upon a *principle of natural duty*, or for the sake of his own personal happiness."

This, sir, is a decision of the court of a slave State; and when gentlemen claim here that the institution of slavery is founded on the law of God and nature, I beg leave to refer them to the opinions of the judiciary of their own States. They are supposed to give their opinions dispassionately and impartially, without reference to the passions or feelings of men, and with an intimate knowledge of what slavery is. This judge depicts in terms so bitter the institution of slavery, that if any northern man were to use similar words here, he would be called *fanatical*. This same judge was at the time deciding the principle that to shoot and kill a slave, and a woman, too, was not murder—nay, not even an assault and battery. That, sir, was in 1829—the same year and about the same day that the poor, denounced usurper GUERRERO

issued his decree for the abolition of slavery in Mexico. I do not say it by way of reproach, but it is a strange coincidence.

Mr. DAWSON. Does the Senator say that is consonant with the law of North Carolina?

Mr. WALKER. The principle is decided in this case that such is the fact.

Mr. DAWSON. But the law is not so now.

Mr. WALKER. I am happy to hear it. I quoted this simply for the purpose of showing that it had been denied in the most solemn manner that the institution of slavery or the right to hold slaves existed in the laws of nature or of nature's God. The case I referred to was the case of the State vs. Mann, and, as reported, is as follows:

"The defendant was indicted for an assault and battery upon LYDIA, the slave of one ELIZABETH JONES. On the trial, it appeared that the defendant had hired the slave for one year; that during the term the slave had committed some small offence, for which the defendant undertook to chastise her; that, while in the act of so doing, the slave ran off, who reupon the defendant called upon her to stop, which being refused, he shot at and wounded her. A verdict was returned for the State, and the defendant appealed."

In the court above, the doctrines were held as I have asserted, and the judgment of the court concludes:

"Let the judgment below be reversed, and judgment entered for the defendant."

Mr. BADGER. If the Senator will allow me, I will state, that in North Carolina, it is held undoubtedly, by the judgment of her highest tribunals, that, by the common law of North Carolina, the homicide of a slave is an offence, either murder, or manslaughter, or excusable homicide, just as it is in regard to the killing of free persons.

Mr WALKER. I have read what the case was. Being indicted, the prisoner was convicted; he took an appeal to the court above; the *court set him at liberty*. After describing what slavery is, as I before read, the court goes on to say:

"Such services can only be expected from one who has no will of his own—who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the *body*. There is nothing else which can up rate to produce the effect. The power of the master must be absolute to render the submission of the slave perfect. I must freely confess my sense of the harshness of this proposition—I feel it as deeply as any man can. And as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things, it must be so. There is no remedy. This discipline belongs to the state of slavery. * * * * We cannot allow the right of the master to be brought into discussion in the courts of justice. * * * It will be the imperative duty of the judges to recognize the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute."

This gives to the master absolute dominion over the body of the slave.

Mr. DAWSON. I think the honorable Senator does great injustice to a large section of this country, by saying that the killing of a negro is not a criminal offence.

Mr. WALKER. I said that the *principle* had been decided by the Senator's courts.

Mr. DAWSON. The shooting and killing of a negro is as much a crime, as the killing of any other individual. It is so considered in every State. There is scarcely any difference made between the killing of a white person and the killing of a slave; and it is wrong that a contrary impression should be made upon the public mind by a statement so inconsistent with what is the fact.

Mr. WALKER. I am glad to hear the explanation. This decision to which I have referred may be incorrect—it may not be law.

Mr. DAWSON. If the Senator will read the case entirely through, he will find that it goes upon an entirely different principle from that which he supposes.

Mr. WALKER. It appears from this decision that a master has unlimited control over the *body* of a slave.

Mr. DAWSON. It gives him no power to destroy a slave, as in ancient Greece and Rome. An act which deprives a slave of life is placed upon the same footing as that which takes away the life of a free person.

Mr. WALKER. I am very glad to hear that such is the law now.

Mr. BUTLER. The dominion of a master over his slave is something like the control of an officer over a soldier. The officer, I presume, could be indicted for killing with malice aforethought; and in all cases of which I have any knowledge, it is held to be murder where a master, with malice aforethought, takes the life of his slave; but as the Senator from Georgia says, the master, having the absolute control over the slave, has a right, if he escapes, to arrest him; and, if he resists, he has a right as the officer would have a right in regard to a soldier, to cut him down with the sword. And but for some power of this kind, I suppose we could scarcely control our slaves; but it is very rarely that a master has been indicted for killing a slave. Where a slave has been killed, it has usually been by some irresponsible person, or by the agency of some person who is a stranger to the domestic government of the slave. It is extremely rare that a master is charged with killing his own slave, and still more rare is it that he is charged with killing a slave born in his own family.

Sir, the relation between the master and slave is not fully understood in the non-slaveholding States. There is a degree of feeling on the subject that would revolt at anything of the kind. I know that in the case that has been quoted from North Carolina, there was a man who hired a slave, and the slave attempting to escape from his dominion, he very foolishly shot the slave. Nevertheless, the master was indicted for thus shooting him—indicted for homicide.

Mr. CHASE. He was indicted for assault and battery.

Mr. BUTLER. Was the negro killed?

Mr. CHASE. Not at all.

Mr. BUTLER. Oh, well! the impression was made on my mind that the man shot the negro down. I suppose he shot him with small shot, and did not hurt him much. [Laughter.]

Mr. WALKER. I do not know what kind of shot she was shot with, or with what kind it is permissible to shoot slaves.

Mr. DAWSON. I would merely observe, sir, that if these things are read by the Senator from Wisconsin, for the purpose of showing the want of humanity on the part of the slaveholders of the South, he is doing them great injustice. It is not true in point of fact. I know the Senator from Wisconsin does not make the charge.

Mr. WALKER. Certainly not.

Mr DAWSON. But the tendency of his observations will be to create that impression. The working of the system ought to be understood throughout the country, as it is understood at home. I am no more responsible for the evils which may arise from it, than the gentleman before me; but as a man, as a Christian, as a philanthropist, I have only to make the best of the institutions around me; and it is unkind and ungenerous for those who are

not acquainted with the institution, to cast an unfounded imputation upon us. The great difficulty is, that they intermeddle with that which they do not understand. You may discuss the abstract question of slavery, if you please; but when you come down to discuss the private relations, the social equality, kindness of feeling, and humanity, which exist between master and slave, then you intermeddle with an institution that has been approved by your ancestors, as well as mine—you interfere with a matter which affects the sensibilities of us all: there you must stop, because those are responsibilities that are personal in their character—they are responsibilities that we feel not merely as citizens, but as Christians, as patriots, as philanthropists. We have the right to control and manage our slaves, and we are wielding that right for the best and most humane purposes; and if you would leave us alone, we would carry it on in a way not to affect your consciences, and I trust in God not to increase any excitement which may have been produced heretofore.

Mr. WALKER. After this long episode, sir, I will again repeat that I quoted this decision for no such purpose as the Senator from North Carolina supposes. I quoted it to show that this institution was neither a political law of the land nor a species of property based on the laws of nature or of nature's God; and it is the language of the learned Judge on the subject of slavery, that Senators must deprecate, not mine; for I used none with reference to that question in the way complained of. I was speaking, when interrupted—or rather was instituting a comparison between what *this learned Judge*, not the people of North Carolina, had done, and what GUERRERO had done. If anything else has come out, it has been extorted by interruptions. But I must again refer the Senator from Mississippi to the dem l in the case, of his natural or divine foundation for slavery.

Mr. DAVIS. The Senator has just made some remark I do not exactly understand—some personal allusion.

Mr. WALKER. I think not. I merely called the Senator's attention to what I read.

Mr. DAVIS. Why read it so particularly to the Senator from Mississippi?

Mr. WALKER. Because it has a bearing by way of reply to his argument.

Mr. DAVIS. Does the Senator mean to read it to me as an answer to my argument?

Mr. WALKER. I read it in order to show that the institution of slavery is not supported by the law of nature, as the Senator had claimed.

Mr. DAVIS. But I ask whether the Senator means to adopt that language and apply it to me?

Mr. WALKER. By no means. I read it as the statement of the Judge; and I so stated half an hour since. If the gentleman will pay due attention to my remarks, he will find that I will give no reasonable cause of offence. When I do, it will be for a greater cause than the Senator has given me yet; and when I do, I shall mean it, and be understood without questioning. If the Senator understood me as applying the term "stupid" to him, he was entirely mistaken. I disavowed that long ago.

[Without concluding, Mr. WALKER gave way for a motion to adjourn.]

IN SENATE, *Friday*, *March* 8, 1850.

Mr. WALKER resumed and concluded as follows:

Mr. PRESIDENT: I come now, sir, to treat of this question in some of its more general features. It is contended upon general principles, by our friends of the South, that under the general law of the equality of property, they have the right to enter the acquired territories, and to take with them their property in the same manner that the citizens of other States have the right to take theirs. Without going at any great length into this subject, I think there are in this many fallacies which might easily be exposed. The principal fallacy is this: that the right to the involuntary servitude of the slave is not, as claimed, (as I have shown by the judicial authorities of the slave States,) a natural or universal right. It is not a right according to the law of nature, or according to the unwritten common law. This brings us, then, to the conclusion, that slavery is a local institution, peculiar to the States in which it exists. It has no *extra* territorial influence or extent whatever; and when our friends claim the right to take their slaves to California and New Mexico, or to any other territory of the United States, they are claiming nothing more nor less, as has been frequently remarked in Congress, than the right to take their local laws or local institution. I do not—I cannot—see how they are to decide among themselves which of their local institutions are to go. Are they to be the local institutions of the States in which the slave is made a part of the realty—where the slave descends with the real estate? or is it the institutions of a State where he is mere personal property? Is it to be the institutions by which the slave is amenable to one code of criminal laws, or where another code of criminal laws exists. These are difficulties to be settled among themselves; and it brings me to this conclusion, that any one of the free States might just as well claim to have its institutions carried there, as the South. There are States which have institutions of as peculiar a character, perhaps, as the institution of slavery—using the term "peculiar" as applied to that which is confined to a particular locality. Take the great State of New York: she has an institution in which she has property of as much pecuniary value invested, as any slave State has in the institution of slavery—I allude to her general banking institution. Should we not think it an enormity—would not the South think it an absurdity—if the State of New York should claim that she had a right to go with her banking property into the territories of the United States, merely because that was her property in her own State? Would it not be an enormity if New York, not being permitted to do this, should be continually threatening, both in and out of Congress, to dissolve the American Union? But gentlemen of the slave States seem to be unwilling to recognize the local institutions of their sister States, while they claim that theirs shall be recognized to the fullest extent. I deduce from this the argument, that the Constitution of the United States, in regard to slavery, no more overrides and abrogates the laws of California, which existed at the time of the acquisition, for the benefit of slavery, than for the benefit of the banks of New York, or of the lotteries of some other States of this Union. If it overrides and abrogates the laws in favor of slavery, it must override and abrogate them in favor of free schools, banking institutions, lottery institutions, and other institutions of various States in the Union; for as matters of property—as matters of private and public right—they are just as much recognized by the Constitution, as the institution of slavery, and a great deal more; for they do not

require the Constitution of the United States to impose upon Congress or the States the injunction to surrender their property; but it must be surrendered as a species of property, existing by virtue of the laws of nature, or the common law, if you please, under the general comity of nations, without any constitutional guaranty for the purpose. They stand, then, upon a broader basis—a firmer basis—than the institution of slavery, except in the local district where it exists.

I was really surprised to hear the Senator from Mississippi, [Mr. DAVIS,] and other Senators, quote the correspondence between Mr. Trist and Mr. Buchanan, to prove that slavery existed by the laws of Mexico. If that correspondence proves anything, it proves conclusively that slavery was then abolished, and did not exist by law. Let us turn our attention to the language of the extract which has been read:

"Among the points which came under discussion, was the exclusion of slavery from all territory which should pass from Mexico. In the course of their remarks on the subject, I was told that if it were proposed to the people of the United States to part with a portion of their territory, in order that the *inquisition* should be therein *established*, the proposal could not excite stronger feelings of *abhorrence* than those awakened in Mexico by the prospect of the *introduction of slavery* in any territory parted with by her. Our conversation on this topic was perfectly frank, and no less friendly; and the more effective upon their minds, inasmuch as I was enabled to say, with perfect security, that although their impressions, respecting the practical fact of slavery, as it existed in the United States, were, I had no doubt, entirely erroneous, yet there was probably no difference between my individual views and sentiments on slavery, considered in itself, and those which they entertained."

Now, sir, if we owned a portion of territory in which the inquisition *existed*, and were about to cede it to another power, would it excite any very strong feeling of *abhorrence* that is was to be *introduced* there? Not at all. Why, then, did it excite abhorrence in Mexico that slavery might be introduced into the territory, but for the consideration that slavery had been there *abolished*, that the chains had been taken off, and the slaves been rendered free? Abhorrence was excited lest it should be *introduced*. A proposition to allow it to remain, if it *existed*, would have excited no abhorrence at all. They feared that slavery would be *introduced* when the territory passed from under the free government of Mexico. And this is the correspondence brought to show that slavery did, in fact, exist! If it did, it was folly for the Mexican commissioner to speak of any abhorrence to be excited.

If I was surprised at this, I was somewhat amused, after the Senator from Mississippi had spent so much time in proving that slavery did *exist* by law in California, that he should, on the second day of his speech, go on to show how much Mexico had been degraded *since the abolition of slavery* in that country. He speaks thus:

"I therefore deny, what is affirmed by the Senator from Kentucky to be his second truth, and claim in evidence of that denial, that the produce of Mexico, *when slavery existed there*, was far beyond what it is at present. * * * Mexico has, *since the abolition of slavery*, so sunk into her present impoverished condition, that, to derive money for her support, she sold her territory to the United States; and it is proof that cannot be denied of the evils of the institution of slavery in a soil and climate like hers."

This sounded to me very much like unsaying all the Senator had said.

If the position of things is as I have stated—if slavery, and the slave-trade, have been abolished—if slavery, and the slave-trade, have been prohibited, and that, not only according to the decision of the Supreme Court, but of the courts of the slave States themselves, those laws of abolition and prohibition are now in force—what is the state of things that we arrive at? The Senator from Mississippi answers the question, when he makes use of the following language:

"Why, sir, what chance is there between this and the Wilmot proviso? I, for one, would prefer the Wilmot proviso. I demur, sir, after the House had killed the Wilmot proviso, against any claim to a dukedom for him who brings the lifeless corpse into the Senate, and least of all have I any thanks to return to the Senator from Illinois, for the ground which he says he has assumed among his constituents, in opposing the Wilmot proviso—that it had no application, because slavery being already excluded from the territories, it was wholly unnecessary to prohibit it by new enactment.

"Sir, I prefer the Wilmot proviso to that position: I prefer it because the advocate of the Wilmot proviso attempts to rob me of my rights, while acknowledging that, by the admission, it requires legislation to deprive me of them. The other denies their existence."

I agree with the Senator from Mississippi, perfectly, that the Wilmot proviso is better for him, but for a very different reason from the unkind one which he gives. It is not because the Wilmot proviso would rob him of anything, for one cannot be robbed of what he has not, but because it assumes the burden of the affirmative by those who would restrict slavery, while my position and doctrine would throw the affirmative on those who would extend it. The Senator from Virginia [Mr. MASON] seems to have anticipated the necessity for taking the affirmative, when he spoke the following:

"I do not mean, sir, to detain the Senate by a discussion; but I deem it my duty here, at the very outset, to enter a very decided protest, on the part of Virginia, against such a principle of law. It would take away the whole ground at once that our people rest upon."

Precisely so; I said the same thing to my constituents; but corrupt politicians and hireling presses had got up such an infernal hubbub about me, that I was not believed. Perhaps the Senators from Virginia and Mississippi may be more successful.

The position of the South last winter was more magnanimous than now, and was met upon my part with a corresponding magnanimity. They only asked that the matter should be left to the Constitution of the United States. The proposition I offered, extended the Constitution to that country. I took them at their word. They contended that if the Constitution was extended there, the right to take and hold slaves there would be extended also. What would have been the effect, is not for me to determine; but the judiciary of the country seems to have settled it pretty conclusively. I believed, sir, at the time, that what the North required was, that the condition of things in New Mexico and California should remain as it was. The South were content with that. Upon that we met—upon that we voted. It turns out, sir, that the position which I viewed myself as standing in, was a stronger one than if the North had assumed the affirmative, and proposed to vote the prohibition into the territories. My gratification is unbounded to find myself now sustained by the great statesmen and jurists from Kentucky and Missouri, [Messrs. CLAY and BENTON,] as well as many others; and by the unwilling admissions of the distinguished Senators from Virginia and Mississippi, [Messrs. MASON and DAVIS.]

The Senator from Mississippi has given his views, as to the causes which are to lead to the close of our career, and have already led to the dissatisfaction between the two extremes of our Republic. He says:

"But, sir, if this last chapter in our history shall ever be written, the reflective reader will ask, whence proceeded

this hostility of the North against the South? He will find it there recorded, that the South, in opposition to her own immediate interests, engaged with the North in the unequal struggle of the revolution. He will find again, that when northern seamen were impressed, their brethren of the South considered it cause for war, and entered warmly into the contest with the haughty power, then claiming to be mistress of the seas. He will find that the South, afar off, unseen and unheard, toiling in the pursuits of agriculture, had filled the shipping, supplied the staple for manufactures, and enriched the North. He will find that she was the great consumer of northern fabrics—that she not only paid for these their fair value in the markets of the world, but that she also paid their increased value, derived from the imposition of revenue duties. And, still further, if he seeks for the cause of this hostility, it will be found in the fact, that the *South held the African race in bondage*, being the descendants of those who were mainly purchased from the people of the North. *And this was the great cause.*"

If ever the historian writes that as the cause of the difficulty, I need no stronger proof than I can produce from the lips of the Senator from Mississippi himself, that it will be manifest injustice to the North. He says, in his speech of January 29:

"And that I may be understood upon this question, and that my position may *go forth to the country* with this so-called compromise, *I here assert, that never will I take less than the Missouri compromise to the Pacific ocean, with a specific admission of the right to hold slaves there* until they have been admitted into the Union. I will never consent to any proposition—I forbear a conclusion that I thought of making."

What that conclusion was to be, I know not; but we have heard in both houses of Congress this conclusion to such sentiments, that "the South will not submit to such proceedings;" that "she will resist to the last extremity, and at all and every hazard." This has become the stereotyped conclusion in all the southern portion of the country. I hope this is not the conclusion which the Senator forbore. But, if this Union shall be dissolved, and the Republic fail, and its history shall be truly written, that "last chapter" will read that the Republic fell under a struggle, on the part of the South, to enslave that which was free; while the effort of the North was but to perpetuate that liberty which already existed. The witness will be the Senator from Mississippi.

It has been often said here, that it will be cruel as well as unjust to pen up slavery in a narrow space, and by that means extinguish it by a lingering death. An investigation of the facts will show, that the institution is not much confined at present; and to show this, I have prepared the following table:

States.	*Acres.*
Florida, January 1, 1849, had land unsold	36,989,972
Arkansas " " " "	30,111,483
Louisiana " " " "	26,991,815
Mississippi " " " "	16,711,850
Alabama " " " "	21,659,847
Missouri " " " "	35,396,810
Texas has unsold at least	150,000,000
	315,711,116
In remaining eight slave States, land unoccupied—supposed	78,9 2,779
Amount of unoccupied land in slave States	394,633,895
This reduced to farms of 160 acres, would make 2,466,336 farms yet unoccupied in the slave States—equal to 160 acres to be worked by every slave, man, woman, and child, in the Republic—besides what they now occupy, which is about	280,000,000
Land occupied and unoccupied in slave States	674,633,895
Whole area of free States	290,577,600
Excess in slave States	383,856,295
Occupied land in slave States, about	280,000,000
Unoccupied land in slave States, over whole area in free	103,856,295

The "*institution*" must be awfully crowded for fresh air.

I wish to address a few remarks to the Senate upon the subject of the admission of California. They shall be of a very general character, and I will introduce them by reading an extract from the late speech of the Senator from South Carolina, [Mr. BUTLER:]

"But to evade this Wilmot proviso, the people were left in a state of anarchy; and under an operation of causes worse than the Wilmot proviso, they are claiming privileges now, by *usurpation*, to which they are not entitled. Is it not a usurpation in any point of view in which we can regard it? Why, sir, *in whom was vested a sovereignty over the citizens and the inhabitants* under the treaty of California? *In the United States.* And I think the honorable Senator from Mississippi [Mr. DAVIS] the other day demonstrated that—and he put the proposition in so strong a point of view, that I think I could not be misunderstood—and the Senator from Georgia has left no ground for others to occupy. I venture to say that there are but very few individuals upon this floor, who will contend before any tribunal that could take cognizance of the subject, that a sovereignty was not vested in the United States, *to be exerted through the agency of their representatives in Congress.*

"The right claimed under the doctrine of self-government, is *extra-constitutional, and has no sanction for its exercise.* When analyzed, it is a right to dispense with the prescriptions of the Constitution, and to use a power in derogation of the rights of the States of this Union, in whom was vested the high sovereignty and eminent domain."

Now, sir, if the Senator will compare these remarks with the almost universal character of the remarks of Senators from the South last winter, he will find that he has unsaid the whole of it. If he will compare this with the doctrine of the resolutions of his colleague in 1847, and his speech thereon, he will find that he is in direct conflict with it. If he will take the *Union* newspaper, published about one year ago, he will find that he repudiates the very thing which was then contended for. We were asked, almost in terms, why we could not let California alone—let her adopt a constitution for herself—and thus let the question be settled? I fear this doctrine will not be very grateful to the ears of the Senator from Michigan, [Mr. CASS,] who delivered a speech some days since, the doctrines of which he now hears condemned by those for whom he has so kindly ventured. If you will compare the doctrines held a year ago, not only by the public press of the South, but by members upon this floor, with those held now, you will find that any one who should attempt to follow the meanderings of the South upon the subject of slavery, will have to assume a condition himself very near that of a slave. He must change his views as often as the position of things changes adversely to the interests of slavery. Just hear the Senator from Louisiana, [Mr. DOWNS.] If his language had been used by a northern man, I will venture to say it would have been taken by him as an insult to the South. He says:

"But, Mr. President, if this were not the case, there are other reasons why the people of the South should not, and never will willingly, consent to receive this State, even if it was a spontaneous movement of the people, without any action of the Government. It was a case in which one half of the Union had no opportunity of being heard. *You took such judgment on them.* Nine tenths of the white men who resided to go there, could not do it. It is much more expensive to transport slaves. *We have not the ships and the means*—we have not been growing rich out of this Confederacy. *You of the South have more stores of wealth to stock your expeditions. We must travel by land, in our cars and coaches and wagons.* We cannot go on so large a scale as the North. We cannot build vessels and put the men on board ships, and take them to California. *We are not so rich as at that*; and the consequence has been that, even if slavery could be admitted by law, *those who had no slaves, and did not want them, got there first, and took possession.*"

This is not a very favorable picture of the prosperity and glory of the South—not a very elegant view of the elegancies, luxuries, and conveniences of the "institution." But it is not a commentary

by me, sir, but by the Senator from Louisiana; and a strange one it is. What would the Senator have? Would he have the elastic, bounding activity of the North, to await the slow and sluggish movements of the slave-labor machinery of the South, in settling the territories? Does he expect this? If so—mark my words—he will expect in vain, until the last clod has fallen upon the coffin of the last slave, whose servile foot imprints the southern soil. It will not wait. You cannot chain the active energy of the North. You could not chain that of a FREMONT. He did not wait to provide "transportation" for slaves; but calling about him his hardy countrymen, he braved the perils of want, hunger, thirst, and mountain snows; nor was he appalled when death itself strewed victims on his path. His noble fortitude and energy have been (as they deserved) rewarded by an active, enterprising people. Though of the sunny South, he possessed the *useful* daring and chainless soul of the North. A GWIN, too, broke the toils that bound him to the corpse of slavery. He, too, has been rewarded.

But, sir, under whose auspices was this State organized? A southern President, a southern Secretary of State, a southern Secretary of War, a southern Secretary of the Navy, a southern Attorney General here, and a southern vice-consul, sent there, as was feared by the North, to settle this whole controversy in favor of the slave interest. It has all been in southern hands; and yet gentlemen tell us the South has been unfairly treated; "that snap judgment" has been taken on them; that they have been deprived of their rights, and are about to have the seal of *inferiority* stamped upon them! Away with such clamor! Mankind will never hear it with patience or sympathy.

The South tell us that if California is admitted, they must "resist at every hazard and to the last extremity." They cannot mean this. They have shown themselves in the history of their country to be men of too much sense. They have shown themselves to be proud of their reputation. They have all that a people can have to be proud of, though they have something to deplore. And, sir, they will never compel the historian to record the fact, that, because they could not enslave the government of one land, they overthrew and destroyed the freedom of another—and their own.

Gentlemen have given us their views upon the subject of allegiance. Under the practice of those views, neither this Government nor any other Confederacy can endure. What, sir, are these views, as expressed by the Senator from South Carolina, [Mr. BUTLER?] They are, that we owe allegiance to this Government only through the States; that we owe allegiance first to the States, and secondly to this Government. I presume that almost every Senator who expresses these views of allegiance has held public station in some one of the States. I would ask him the character of the official oath which he then took? Was it not first "to support the Constitution of the United States," and then "of this State?" The Constitution itself declares that it, together with all laws and treaties which shall be made in pursuance of it, shall be the supreme law of the land, and that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. They come hear and swear to support that Constitution, which makes this Government preëminent above the constitution and laws of any State; and yet they say they intend, should the interests of the State and Union conflict, to violate the Constitution of the United States, and to stand by the State.

Mr. BUTLER. I must ask the gentleman to allow me to interpose and make one remark. That expression of mine has been noticed, I see in northern papers. No Senator upon this floor has thought proper to take notice of it until the present time, and I wish to explain my remarks.

Mr. WALKER. I alluded to various other gentlemen besides the Senator himself—some of them in the House of Representatives.

Mr. BUTLER. Mr. President, when I took my oath to support the Constitution of the United States, I hope I took it as a part of the laws of South Carolina; and so far as South Carolina has delegated to this Government any portion of the powers which belonged to it, they are laws which I am as much bound to obey, as I am the laws of South Carolina. It was stated in some of the northern papers, that I had isolated myself to allegiance to a single State—I had broken and violated the very oath I had taken in the Senate chamber. Now, sir, the power to make war, the power to make treaties, and all those enumerated powers here delegated, under which, in some measure, as a Senator, I must have some control, I regard as having been part of the laws of each and every State in the Union. It is through my State that I am connected with this Government, and it is through that State that I feel myself under obligation to recognize and obey the laws of the Federal Government. If any man has the hardihood to dispute that proposition, I think that there would be very few upon this floor.

Furthermore, I say, sir, that allegiance is a unit. You cannot have two masters, when they give conflicting demands. If I derived through South Carolina my authority to come here, it was to maintain the Constitution of the United States as a part of the bond of this Union, consented to under her hand and seal. And I should like to know what gentleman upon this floor, if a conflict should arise, would say that his allegiance is first due to the acts of Congress, in preference to his allegiance to the State which gives him habitual protection. I have studied this subject. I do not now wish to run it down to its origin; but I will assure the gentleman when he comes to consider it, that he will find it very difficult indeed to regard allegiance as of a double character.

Mr. WALKER resumed. Mr. President, suppose a conflict between the Constitution of the United States and of the States—which is to prevail? Does not the Constitution itself expressly declare, as agreed to by the States, that it shall be the supreme law of the land, anything in the constitutions or laws of the several States to the contrary notwithstanding? Every judge upon the bench is sworn to support the Constitution of the United States as the supreme law of the land. Suppose, sir, that under some infatuation that might seize any State, one of them should pass a law directing the Judge to violate the Constitution of the United States, would the Judge thereby be absolved from his allegiance to the Constitution of the United States? No Government in the nature of ours—a confederated Republic—could stand upon such a foundation. You may amend the Constitution in any respect which the Senator from South Carolina [Mr. CALHOUN] may claim; you may establish what kind of confederation you please; but unless there is an allegiance to the General Government, superior to the allegiance to the States, it must assuredly fall.

The Senator says "allegiance is a unit." If this be so under *our* Government, I must be in a strange kind of a triune "fix." I was born in Virginia, and owe her allegiance by nativity. I have lived in Illinois, and held public station there requiring me to swear to support her constitution. I owe allegiance to her by oath and by adoption. I now live under the dominion of Wisconsin, and in part represent her here. Now, when gentlemen have "resisted to the last extremity, and at all hazards," and to save the Government her friends have rallied to her standard, and I am found among them, (I assure them I shall be, and so will Wisconsin,) if Illinois be among the States to be resisted, and I am caught there, *she* can execute me for treason. But if I escape thence to Virginia, *she* can surely put me to death; for I owe her allegiance by birth and nativity. In vain, in either case, will I say "the Constitution of the *United States is supreme*—I serve that." I will be told *I owed my first allegiance to the States*, and should have *let the Union fall* without a struggle. I ask to which of them? I get no answer—I must die! Away with such ideas of fidelity to our country!

I wish now very briefly to consider the charge which is made against us of aggression. With regard to the restoration of fugitive slaves, there may be cause of complaint. But this is a subject to be provided for by law. Gentlemen of the South, however, accompany this charge against the North with the inquiry, in what has the South made aggressions upon the North? They may not, perhaps, set the same value upon the rights of the humble and obscure, as the people of the North do; but if they will look at the transactions in some of their States, it occurs to me they will find that there has been some aggression, whether they will acknowledge it or not. Suppose that a citizen of Wisconsin or of Massachusetts, colored though he may be, but being a citizen, is entitled to all the privileges and immunities of citizenship in the several States, should visit, in the pursuit of his business, the shores of South Carolina—what hospitality awaits him there? It is imprisonment in the dungeon. Suppose the State from which he goes, not wishing to "*dissolve the Union*" upon this account, "or to resist to the last extremity, and at all hazards," sends another citizen—a white citizen—equally entitled to all the immunities of citizenship, to South Carolina, to inquire why they allowed this infraction of the liberty of the northern citizen—what treatment does he meet with? Why, sir, if *he* is not imprisoned—if *he* is not deprived of *his* liberty—it is because he can make tracks fast enough to save his liberty, and *perhaps* his life. This may not be deemed an aggression upon the North; but aggressions upon the personal liberty of the humble and obscure were once considered aggressions upon the natural rights of mankind. It was such infractions of personal rights that caused the bold barons to rush upon King John, at Runnymede, and extort from him the *magna charta*. It was such, with other aggressions, that brought the head of Charles the First to the block, and drove James the Second from his throne and country.

By way of retaliation, not upon the individuals who have injured them, but upon the States themselves, for the acts of irresponsible men, such infractions of the Constitution have been committed upon those who were exercising the rights which the Constitution of the United States, the laws of God, and the laws of nature, gave them. But I do not wish these things to be treasured up. I hope that any circumstances of this kind, which have transpired in the past, may lie buried with the past, and soon die away from the memory of the North—that they may not be treasured up and held as matters of malice. But if it were not for the union which binds the States of this Confederacy together, like a family of sisters, such aggressions as these would plunge this country in blood. We have had an instance, too recently to be forgotten, where one individual, and not an American, being deprived of his liberty, roused the whole nation. I allude to the abduction of Rev.

Mr. President, we have already heard much—how much too much—about a dissolution of the Union; and some appear to think it may be *peaceably dissolved*. Peaceful dissolution! Why, sir, it sounds to me as incongruous as peaceful war. There are some natural monuments—some commercial features of the country—which it is impossible to dissolve or divide. They must forever remain as monuments, in common, of the unity of this Republic, or become the source of civil war and bloodshed when that unity shall be destroyed. How can you divide the great Mississippi river, the great chain of northwestern lakes, and our other channels of commercial traffic and intercourse? It cannot be; nor can they be used in common and in peace—this Union being gone. The first boatman that descended the Mississippi river, would be so treated as to beget war. Instead of the joeund song and "mellow horn," he would be startled by the boom of the gun, and the sight of the shot skipping across his track, as a warning to round to and report—submit to search—exhibit his clearance—to enter, and pay duty or tribute. That vast river would soon become a second Dardanelles—every town upon its banks another Tripoli. Collision and deadly war must follow, as sure as the Mississippi runs, and shall be made to lave the shores of different Powers. So of all our other great channels of intercourse and commerce.

When dissolution shall come—if come it must—instead of the happy, social, political, and commercial intercourse we now enjoy—when the citizen at home is everywhere a citizen—we will be met at every turn by treaties, tariffs, searches, outposts, blockades, and laws of non-intercourse; instead of our temples of worship, education, or amusement, we will have frowning fortresses, moated bastiles, and garrisons, for standing armies; in place of the busy hum of happy peace, we will be startled and shocked by the roar of cannon, the rattle of musketry, the dashing tramp of the war steed, the clash and clang of arms, the shock and conflict of men, the screams of the wounded, and the moans of the dying. Where our valleys now yield the reward of quiet industry, and our hill-sides are odorous with the blooming vine and olive, those valleys will be afloat in crimson gore—those hill sides whitened with the bleaching bones of kindred and companions! May he who intentionally takes the first step toward this horrid consummation, suffer through life all the tortures of despair and wretchedness! May such forsake his eyes, and hearing his ears! May leprous scales cling to his wretched carcass, while disease, want, hunger, thirst, and cold, feed upon his vitals! And in his last hour, may he have no kindly hand to smooth his pillow—no kindred smile to light his exit to the grave! Nay, sir, may he have no pillow on which to die—no grave in which to repose! And

in the dread tribunal of eternity, may he barely meet the mediatorial interposition of Jesus at the throne of God! For such a wretch the Saviour scarcely died!

This, sir, is my curse for the would-be destroyer of this Union and Republic. If he be in this chamber—which I cannot believe—the curse is for him; and if I could add to my tongue the sting of the scorpion—the fire that is never quenched—the gall that is persistent through eternity—I would make that curse more poignant, more burning, and more bitter.

If it were possible so to bury a magazine as to blast this continent asunder, it would hardly produce the horrors of a dissolution of this Union, and the consequent downfall of this Republic. Those horrors would not be bounded by this continent—they would span and bound the world. This is a land too goodly not to have excited the envy and avarice of tyrant aspirants in every quarter of the globe. The history of the conflicts between the Normans and the Saxons—the Tudors and Plantagenets—of York and Lancaster—yea, of all the factions that have ever contended in England and Europe—would constitute but a tinted page, compared with the blood-red history of our downfall, and its consequences. If come they must—which may God avert! if run their course they must—when they are ended, when "it is finished," there will be scarcely blood enough left in the veins of surviving man, with which to post up the crimson record. If

"Freedom shrieked when Kosciusko fell,"

when this Republic shall fall, Freedom

"Sighing from her seat, through all her works,
Will give signs of woe that all is lost."

Ours will be a bitter cup to all mankind who aspire to freedom; and may Heaven grant to "let that cup pass!" Contemplate the noble Kossuth in distress, wending his way through secret and lonesome paths, seeking egress from a land of oppression, that he may go away to this, the land of his promise and his refuge. The startling cry breaks upon his ear—THE AMERICAN REPUBLIC HAS FALLEN! With an aimless gaze of wan despair, he falls—his great heart bursting, as he sighs a last farewell to liberty and hope!

Sir, if fall we must, and you should be so wretched as to survive that fall, when, in after and remote years, prompted by a patriotism no longer useful, you shall make a pilgrimage to this shrine of our then departed empire, you will find—

"The wild briar tangled where rose-trees had been,
The city in ruins, and lonesome the green."

As you then stand in this chamber, meditating on the fading past, a death-watch silence—mournfully expressive of departed greatness—will be broken only by the falling drops of accumulated damps, or the sound of the nail falling from its neglected and decaying beams, to tell more plainly of the ruin and the change. The beautiful though melancholy lines of Moore will be then appropriate to your meditations:

"The harp that once through Tara's halls
The soul of music shed,
Now hangs as mute on Tara's walls
As if that soul were fled.

No more to chiefs and ladies bright
The harp of Tara swells;
The chord that breaks alone at night
Its tale of ruin tells.

Thus Freedom now so seldom wakes,
The only throb she gives
Is when some heart indignant breaks,
To show that still she lives!"

But it must not—it cannot be. There are too many glorious memories—too much of bright promise and of hope associated with this happy land—to leave any one indifferent to its fate, much less with a desire for its ruin. Those who established our Union and Republic, established in them a monument of fame and glory to themselves and their posterity. They left it to our care, with the charge to guard it from the ruthless hand of the spoiler, and to adorn it with the garlands and flowers of veneration, fidelity, and affection. They lighted the fires on the altar of freedom, and left them brightly burning, with the injunction to us to keep the flame perpetual. If now we betray our trust, and make ours the hand to tear down that monument, and dash out that flame, if the heaviest vengeance of Heaven be not visited upon us, it will be that the Divine Ruler of nations will manifest his omnipotence more through his attribute of mercy than of justice.

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